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IN RE:

COMPLAINT OF BEN LOMAND
COMMUNICATIONS, INC.

against

CITIZENS COMMUNICATIONS
COMPANY OF TENNESSEE LLC,
d/b/a FRONTIER COMMUNICATIONS
OF TENNESSEE.

DOCKET NO. 02-01221

BEN LOMAND COMMUNICATIONS, INC.'S
THIRD
MOTION TO COMPEL RESPONSES TO ITS DISCOVERY REQUESTS

On December 9, 2003, a status conference for this matter was held at the Tennessee Regulatory Authority ("Authority" or "TRA") regarding procedural and discovery issues. Randal Gilliam presided as Hearing Officer. The parties informed the Hearing Officer that while the majority of discovery issues have been settled, six issues remain. At the request of the Hearing Officer, Ben Lomand Communications, Inc. ("Ben Lomand"), with this motion, by and through counsel, sets forth the remaining discovery issues of Interrogatories 9, 10, 11, and 16, and Exhibit 1 of the Response of Citizens to the First Discovery Requests.

Pursuant to Tennessee Rules of Civil Procedure 37.01 and Tennessee Regulatory Authority Rule 1220-1-2-.11(9), Ben Lomand Communications hereby requests that the Authority compel Citizens Communications Company of Tennessee LLC, d/b/a Frontier

Communications of Tennessee ("Citizens" or "Frontier") to provide full and complete responses to the enumerated discovery requests which were filed and served on Frontier on February 18, 2003 and July 2, 2003. As set forth in greater detail below, Frontier's objections and responses are legally insufficient to allow Frontier to evade Ben Lomand's discovery requests. According, Ben Lomand requests that the TRA deny Frontier's objections and compel Frontier to respond.

I. GENERAL RESPONSE

Frontier's specific objections, which pertain to the relevancy of the issue of predatory pricing, contravene Tennessee's liberal discovery rules.¹ See, Harrison v. Greenville Ready Mix, Inc., 220 Tenn. 293, 301-02, 417 S.W.2d 48, 51 (1967).

Tennessee Rules of Civil Procedure 26 governs what is discoverable in Tennessee. This rule is broad and provides that parties may "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved whether it relates to the

¹ Frontier's response included "General Objections" that do not relate to any specific discovery request, which objected to discovery requests that they exceed the cost justification filed for the April 11 Tariff, violate attorney-client privilege or work product doctrine, proprietary and confidential absent a protective order, and requests information not required by the applicable rules of the TRA. The TRA should ignore such General Objections because they are not tied to specific discovery requests. See, Duncan v. Duncan, 789 S.W.2d 557, 560 (Tenn. App. 1990).

claim or defense of the party seeking discovery or if the claim or defense of any other party.
..." Tenn. R. Civ. P. 26.02(1).

Ben Lomand's discovery requests are well within the scope of and reasonably calculated to lead to admissible evidence concerning the issues of this matter.

The burden is on Frontier, the party resisting discovery, to clarify and explain its objections and to provide support therefore. See, Roesberg v. Johns Manville 85 FRD 292 (ED Penn. 1992); Miller v. Panucci, 141 FRD 292, 311 (CD Calif. 1992) (parties opposing discovery are required to carry a heavy burden of showing why discovery should be denied).²

II. RESPONSES TO FRONTIER'S SPECIFIC OBJECTIONS TO FIRST SET OF DISCOVERY REQUESTS

1. Frontier's objections to Interrogatories 9, 10, 11, and 16 are without merit. Frontier objects that the Interrogatories pertain to the allegations of undue preference and unjust discrimination, and that any information regarding predatory pricing is not to be furnished. The information requested in Interrogatories 9,10, 11 and 16 is relevant and necessary to prove predatory pricing. It is essential to know why certain services have been offered in the McMinnville and Sparta areas and not elsewhere in Tennessee. Again, Ben Lomand reiterates that such information is necessary and relevant to the allegation of predatory pricing. The information requested may prove that there has been predatory pricing by showing that Frontier has targeted the McMinnville and Sparta exchanges for

² These references to Federal Rule of Civil Procedure 26 are quoted because, in general, Tennessee Rule of Civil Procedure 26 is identical to Federal Rule of Civil Procedure 26. See, Austin v. City of Memphis, 684 S.W.2d 624, 631 (Tenn. Ct. App. 1984).

the elimination or discouragement of competitors by setting its tariffs below cost, offering upgraded services in such exchanges, and that Frontier offered such tariffs elsewhere than in those exchanges in Tennessee with the result that such tariffs may have been rejected or led to elimination or discouragement of competition in such exchanges

2. Ben Lomand and the Authority need to know what happened in other state with such a tariff - whether the tariff put competition out of business or whether a state regulatory commission denied such a tariff, especially on the grounds alleged by Ben Lomand. If these did occur, it would show a pattern of anti-competition and predatory pricing.

III. RESPONSES TO FRONTIER'S SPECIFIC OBJECTIONS TO SECOND SET OF DISCOVERY REQUEST

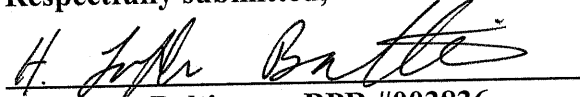
1. Citizens was asked regarding its Exhibit I to indicate the amount of revenue from business customers. Citizens objected to this request on the grounds that this is information it cannot give to a competitor. Ben Lomand's response is that such information is necessary for Ben Lomand to prove its case and that the furnishing of such information is a logistical problem only. The solution is for this information to be released only to Ben Lomand's Attorney and Expert witness under the terms of the Agreed Protective Order.

2. Data Requests numbers 2 and 3 asked for the amounts of uncollectibles associated with business revenue. Citizens objected on the grounds that it does not track such information during the ordinary course of business. Such information is necessary to prove predatory pricing. Citizens should be able to furnish and track the amount of its uncollected business revenue.

IV. CONCLUSION

For the foregoing reasons, the Authority should grant Ben Lomand's Motion to Compel and direct Frontier to respond completely and fully to Ben Lomand's discovery requests.

Respectfully submitted,



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Certificate of Service

The undersigned hereby certifies that on this the 12th day of December, 2003, a true and correct copy of the foregoing has been forwarded via first class U. S. Mail, hand delivery, overnight delivery, or facsimile transmission to the following.

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